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Attorneys for Plaintiff Gor Gevorkyan

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Gor Gevorkyan on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

Bitmain, Inc., Bitmain Technologies, Ltd.
and DOES 1 to 10,

Defendants.

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Case Number: 3:18-cv-07004-JD

**PLAINTIFF'S SECOND
SUPPLEMENTAL BRIEF IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Plaintiff Gor Gevorkyan submits this second supplemental brief in opposition to Defendant Bitmain Technologies, Ltd.'s ("Bitmain Hong Kong") Motion to Dismiss for Lack of Personal Jurisdiction ("Motion") (D.E. No. 33). Plaintiff previously submitted a brief in opposition to the Motion on October 23, 2019 (D.E. No. 35) and a First Supplemental Opposition Brief on June 11, 2020 (D.E. No. 62-4). The parties have conducted a period of jurisdictional discovery which was delayed as a result of restrictions relating to the coronavirus pandemic and China's prohibition against taking depositions for U.S. cases in China.

Before the deposition, this Court noted that there was already substantial evidence in the record to support jurisdiction against Bitmain Hong Kong. *See* Declaration of Manny Starr ("Starr Decl.," filed herewith), Exh. 1, 12/19/19 Hearing Tr. at 2:14-18, ("I was initially inclined just to find jurisdiction because there is certainly a lot in the record about Bitmain Technologies."). That evidence includes the following: 1) Bitmain Hong Kong's highly interactive website from which Bitmain Hong Kong sells ASIC devices to customers in California;¹ 2) Bitmain Hong Kong's "Official YouTube Channel" with a video promoting its intercontinental sales office in San Jose, California (D.E. 35-8), 3) Bitmain Hong's Kong's efforts to hire sales specialists to work in Bitmain's San Jose Office and listing its office in San Francisco, California (D.E. 35-4); 4) a LinkedIn page for Bitmain Sales Representative (Peng Li) listing his office in San Jose (D.E. 35-9); and 5) documents concerning Bitmain's California ASIC device sales forum in California (D.E. 35-12).

This evidence shows the court may exercise jurisdiction over Bitmain, because Bitmain purposefully directed its activities toward residents of California and the Northern District's exercise of personal jurisdiction comports with "fair play and substantial justice." *Burger King*

¹ As stated in the declaration of former CFO for Bitmain Hong Kong and Bitmain's Holding Company, Luyao Liu, who admitted that customers purchase ASIC devices from Bitmain Hong Kong's website. D.E. 32-1, Liu Decl. at ¶1 (Defining "Bitmain" as "Defendant Bitmain Technologies Ltd."), ¶6 ("when a customer purchases ASIC devices from Bitmain's website..."). Mr. Liu also produced Bitmain Hong Kong's purported terms of service from Bitmain Hong Kong's website. *See id.* at Exh. 1.

1 *Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-478; *Yahoo! Inc. v. La Ligue Contre Le Racisme*
 2 *Et L'Antisemitisme* (9th Cir. 2006) 433 F.3d 1199, 1206 (en banc). *See also Starlight Intl., Ltd. v.*
 3 *Lifeguard Health, LLC*, 2008 U.S. Dist. LEXIS 58927, at **13-14 (N.D. Cal. July 22, 2008)
 4 (“Courts within the Ninth Circuit have concluded [] that a company's use of an interactive
 5 website may constitute purposeful availment of a forum.”).

6 Plaintiff’s supplemental briefing set forth additional evidence, including: 1) generation of
 7 revenue for Bitmain Hong Kong from the sales of ASIC devices in California (D.E. 62-9); and 2)
 8 proof of insurance for real property in the state of California listing Bitmain Hong Kong as the
 9 insured party (D.E. 62-18).²

10 The Court previously expressed concern that Bitmain Hong Kong was doing a “tap dance
 11 around the company name” to avoid jurisdiction in California and stated that “if I get the sense
 12 that anybody has played hide the ball with jurisdiction, there are going to be consequences ... and
 13 the consequences will be significant.” Starr Decl. Exh. 1, 12/19/19 Hearing Tr. at 3:2-5; 5:2-3.
 14 Jurisdictional discovery has confirmed that this is exactly how Defendant and the other Bitmain
 15 entities operate.

16 Bitmain Hong Kong produced a witness employed by a wholly owned subsidiary of the
 17 Defendant, Beijing Bitmain Technology Co. (“Beijing Bitmain”), for a deposition concerning
 18 jurisdiction over Bitmain Hong Kong. As confirmed by the Beijing Bitmain employee, Bitmain
 19 Hong Kong uses several entities in connection with the sales of Bitmain ASIC devices in the
 20 United States, including Beijing Bitmain and other Bitmain entities, to sell the devices, and
 21 receive and process orders, while Bitmain Hong Kong receives the revenue from the sale of the
 22 devices. As the witness admitted, U.S. customers contract directly with Bitmain Hong Kong for
 23

24
 25
 26 ² In response to the filing, Defendant submitted a proposed amendment to that document. *See*
 27 Dkt. No. 68-1. However, even this amendment lists Bitmain Hong Kong as a “Name Insured.”
 28 Plaintiff notes that Bitmain Hong Kong failed to produce either the proof of insurance or the
 amendment in the course of jurisdictional discovery. Instead, the proof of insurance document
 was obtained only through third-party discovery and the amendment was only produced after
 Bitmain Hong was again caught hiding the ball.

1 the purchase of Bitmain ASIC devices, and revenue from the sale of Bitmain ASIC devices flows
2 directly to Bitmain Hong Kong.

3 Moreover, the Bitmain employees who facilitate and process these transactions include
4 individuals who frequently work from Bitmain's California office, acting as agents on behalf of
5 Bitmain Hong Kong. In addition to the evidence previously presented to the Court, this new
6 evidence strongly militates in favor of finding that Bitmain Hong Kong is subject to jurisdiction
7 in the State of California.

8 **II. Argument**

9 When required by stipulated Order of this Court (D.E. No. 73) to produce a witness to
10 testify about the statements in the declarations submitted by Defendant Bitmain Hong Kong on
11 its Motion, Defendant did not produce one of its own employees as knowledgeable about its
12 affairs. Instead, Defendant designated Gang Ren (the "PMK") as the deponent. The PMK is a
13 manager of Beijing Bitmain and claims that he has never been employed by Bitmain Hong Kong.
14 *See* Star Decl. Exh. 2, PMK Tr. Excerpts (hereafter, "PMK Tr.") at 22:12-22:21. The PMK
15 testified that he had only a "rough idea" about the affairs of Bitmain Hong Kong, which is based,
16 in part, on his preparation for the deposition. *Id.* at 22:24, 33:23-34:1. The PMK was unable to
17 state whether Bitmain Hong Kong's revenues in the United States for any year were less than
18 \$10 million or more than \$100 million. *Id.* at 95:7-96:12.

19 Even though he claims never to have worked for Defendant Bitmain Hong Kong, the
20 PMK testified that he "voluntarily" participated in the deposition at the request of the legal
21 representative of Bitmain Hong Kong and Bitmain's Cayman Islands based holding company.
22 *See id.*, PMK Tr. at 35:8-37:6, D.E. 35-5, Corporate Structure Chart. As noted by his counsel,
23 who also happens to be counsel for Defendant Bitmain Hong Kong, the PMK appeared for the
24 deposition "at great personal sacrifice" *See* PMK Tr. at 112:6-14. The PMK traveled twenty
25 hours to get to the deposition and was subject to a mandatory 21-day quarantine in a government
26 facility during which he was separated from his family. *Id.* This is quite a sacrifice for someone
27 who never worked for the Defendant company and who claims to have appeared voluntarily,
28 without being directed to do so by his superiors. *Id.* at 24:4-6.

1 The PMK confirmed the Court’s suspicion that the Bitmain entities “tap dance around the
 2 company name,” stating that nobody can tell which of the many Bitmain companies is being
 3 referred to when the formal name of the Defendant is used. When asked if Defendant Bitmain
 4 Technologies Limited was Bitmain Hong Kong, the PMK admitted “one cannot tell from these
 5 shortened names which company it is.” *Id.* at 58:7-14. He further stated:

6 If a Bitmain Technologies Limited is taken out from a particular context or a certain
 7 document we may tell what that entity actually is but when such an overbroad and
 8 generalized question containing the phrase Bitmain Technologies Limited is raised
 nobody can tell the real identity of this company.

9 *Id.* at 58:23-59:4.

10 Even when presented with an invoice which reads:

11 “Seller: Bitmain Technologies Limited” bearing a

12 “Company Stamp” which reads “Bitmain Technologies
 13 Limited,” the PMK testified, “I cannot tell from looking at

14 this document which company this seal represents.” *See*

15 *Starr Decl. Exh. 3, Gevorkyan Invoice. PMK Tr. at 62:19-*

16 64:4 (“Q. Do you have any reason to believe that it is a

17 company other than Bitmain Hong Kong? ... A. As I said, I cannot tell which company

18 this is. I cannot say which company this is.”).

19 Though Defendant failed to produce the relevant documents in violation of its discovery
 20 obligations, Plaintiff independently uncovered further evidence of Beijing Bitmain’s sales
 21 employees generating revenue paid directly to Bitmain Hong Kong for the sale of ASIC devices
 22 in California and throughout the United States. Beijing Bitmain and other Bitmain entities and
 23 their employees acted as agents for Defendant Bitmain Hong Kong, covertly and collectively to
 24 generate revenue from the sale of ASIC devices paid directly to Defendant Bitmain Hong Kong.

25 It is well-settled that minimum contacts of a non-resident's agents or employees may be
 26 imputed to the principal for purposes of establishing specific jurisdiction. *See Burger King* at 471
 27 U.S. at 479, n. 22 (noting “when commercial activities are carried on in behalf of an out-of-state
 28 party those activities may sometimes be ascribed to the party.”) *See also College-Source, Inc. v.*

COMPANY
STAMP:



Starr Decl. Exh. 3, Gevorkyan Invoice

1 *AcademyOne, Inc.*, 653 F.3d 1066, 1078 (9th Cir. 2011) (acts of Chinese contractor engaged by
 2 defendant to download California company’s website materials attributed to defendant for
 3 purposes of specific jurisdiction); *see also Daimler AG v. Bauman* 571 U.S. 117, 135 (2014)
 4 (“Agency relationships ... may be relevant to the existence of specific jurisdiction”).

5 When confronted by Plaintiff’s evidence, the PMK admitted that sales of ASIC devices
 6 are generated by sales employees of Beijing Bitmain, but the revenue from those sales is
 7 received by Bitmain Hong Kong. *See id.* at 42:9-12 (“to enter into contracts with overseas clients
 8 Bitmain Hong Kong is used.”), *id.* at 43:1-3 (“The Hong Kong Company is the main body that
 9 enters into contracts with overseas clientele for the purchase of the equipment.”). The PMK
 10 admitted that Bitmain Hong Kong has only two employees (one who handles legal affairs and
 11 who handles financial affairs), while Beijing Bitmain, which generates millions of dollars in
 12 sales of ASIC devices directly to the Defendant, has 400 to 600 employees, including employees
 13 who frequently perform work in the United States from Bitmain’s San Jose office in connection
 14 with the sale of Bitmain ASIC devices. *Id.* at 69:20-22, 70:2-70:13, 70:24-71:3. The PMK
 15 further admitted that website orders for the sale of Bitmain ASIC devices are accepted and
 16 processed by Beijing Bitmain. *Id.* at 51:13-51:21 (“Once an order is placed online Bitmain
 17 Beijing receives this order and in turn Bitmain Beijing will instruct the production company to
 18 make the shipment”). However, Bitmain Hong Kong is designated the seller for these
 19 transactions.

20 The PMK’s testimony is supported by documentary evidence including Plaintiff’s own
 21 invoice generated from his purchase of ASIC devices in California, and numerous SEC filings
 22 representing millions of dollars of revenue to Bitmain Hong Kong from the sale of ASIC devices
 23 to purchasers in the United States. *See e.g.*, Starr Decl. Exh. 3, Gevorkyan Invoice from Bitmain
 24 Technologies, Ltd.; Starr Decl. Exh. 4, Riot Blockchain, Inc., Form 8-K (“Riot Blockchain
 25 Filing”) at pdf pages 2, 29 (concerning two agreements with Bitmain Hong Kong for the sale of
 26 Bitmain ASIC devices for \$8.6 million and \$26.3 million respectively to the U.S.-based
 27 company); *see also id.* at pdf pages 19, 42 (listing the business contact for the transactions as
 28 Peng Li, who Defendant claims is an employee of Beijing Bitmain), and pdf pages 26 and 49

1 (indicating that the revenue from the transactions were to be transferred to one or more bank
2 accounts held by Bitmain Technology Limited).

3 First, the PMK was questioned about the invoice Plaintiff received from Defendant
4 Bitmain Hong Kong in connection with some of the ASIC devices he purchased from Defendant.
5 *See* Starr, Decl. Exh. 3, 3/20/18 Gevorkyan Invoice. *See also* PMK Dep Tr. at 59-66. The PMK
6 identified the name on the signature as Chen Jie. *Id.* at 64:6-64:10. According to Bitmain’s blog,
7 Chen Jie is the Customer Service Director of Bitmain. *See* Starr Decl. Exh. 5, 3/15/21 Bitmain
8 Blog Post at 5/9. The PMK also identified Chen Jie as a person in charge of Bitmain customer
9 service that was employed by a Bitmain entity other than Defendant Bitmain Hong Kong. *See*
10 PMK Tr. at 63:20-66:7.

11 Just as Defendant “dances around the company name” to mislead the Court, the PMK
12 repeatedly attempted to dance around the names of numerous Bitmain employees during the
13 course of his testimony, including Ms. Jie. *See id.* The PMK admitted that Bitmain has an
14 employee in charge of customer service named Chen Jie. However, the PMK claimed he had no
15 way of knowing if the Chen Jie, whose signature appears on the invoice, is the same Chen Jie in
16 charge of Bitmain’s customer service operations or just happens to be someone with the exact
17 same name performing the same job.

18 Second, the PMK was questioned about California sales activities of Bitmain sales
19 manager Peng Li on behalf of Bitmain Hong Kong. As set forth in Plaintiff’s opening papers,
20 Peng Li’s LinkedIn page indicates that he maintains an office with Bitmain in San Jose,
21 California. *See* Plaintiff’s Opp. at 35-12; D.E. 35-9, LinkedIn Page for Peng (Leo) LI. Mr. Li
22 was also a featured speaker at Bitmain’s California sales conference, referred to as the Crypto
23 Mining Forum. *See* D.E. 35-12 (listing Mr. Li as Antminer U.S. Sales Manager). In Defendants’
24 reply papers it admitted that the same Peng Li often works out of Bitmain’s San Jose office. *See*
25 D.E. 38-1, Liu Reply Decl. at ¶ 8.

26 With respect to Mr. Li, the PMK testified that he was an employee of Beijing Bitmain
27 and denied that Mr. Li generates income for Defendant Bitmain Hong Kong. PMK Tr. at 74:4-
28 75:15. However, when Bitmain Hong Kong completed the sale of \$34.9 million worth of ASIC

1 devices directly to Riot Blockchain in two separate transactions, Mr. Li acted as Defendant
2 Bitmain Hong Kong's business contact for the transactions. *See* Starr Decl. Exh. 4, the Riot
3 Blockchain Filing pdf pages 2, 19 and 42; Starr Decl. Exh. 2, PMK Tr. at 101:1-110:21.

4 When confronted about Mr. Li's role in the Riot Blockchain transaction, the PMK
5 attempted to dance around the name of this Bitmain employee. He claimed to have no way of
6 knowing if the Peng Li listed as the business contact for the Riot Blockchain transaction was the
7 same Peng Li that he knows as a sales representative of Beijing Bitmain. *See* Starr Decl. Exh. 2,
8 PMK Tr. at 103:7-103:17 ("I don't think we should ascertain that this Peng Li is that Peng Li or
9 Li Peng who is the sales rep in Bitmain Beijing"). Nevertheless, the PMK admitted several times
10 that revenue generated from sales of ASIC devices in the United States is paid directly to
11 Bitmain Hong Kong. *Id.* at 42:9-12 ("to enter into contracts with overseas clients Bitmain Hong
12 Kong is used."), *id.* at 43:1-3 ("The Hong Kong Company is the main body that enters into
13 contracts with overseas clientele for the purchase of the equipment.").

14 Third, the PMK was questioned about a Bitmain employee named Tianlin (Irene) Gao.
15 *See* Starr Decl. Exh. 2, PMK Tr. 106:21-110:21. Ms. Gao's LinkedIn page includes her
16 photograph and indicates that she is Director of NCSA Bitmain in San Jose, California. *See* Starr
17 Decl. Exh. 6, LinkedIn Page of Tianlin (Irene) Gao at 2. Ms. Gao is referenced in the Riot
18 Blockchain Filing as the "Antminer Sales Director of NCSA Region, Bitmain." *See* Starr Decl.
19 Exh. 4, Riot Blockchain Filing at pdf page 52. She is quoted in the filing as saying: "**We** are
20 extremely excited to expand and deepen our partnership with Riot Blockchain." (emphasis
21 added).

22 In yet another "tap dance around the name" of a Beijing Bitmain employee, the PMK
23 admitted that he knows a Tianlin Gao as an employee of Beijing Bitmain and this time the PMK
24 positively identified the employee's photo on her LinkedIn Page (under the name Tianlin (Irene)
25 Gao). Starr Decl. Exh. 2, PMK Dep. Tr. at 109:3-109:8 ("I recognize the photo and I know the
26 individual"). However, he stated that he had no way of knowing whether this was the same
27 person referenced in the Riot Blockchain Filing, even though both the LinkedIn Page and the
28 Riot Blockchain filing state that Ms. Gao was Bitmain's Director of NCSA. *See* PMK Tr. at

1 106:22-110:21. The PMK’s doublespeak and consistently evasive testimony serves as further
 2 evidence that Defendant Bitmain Hong Kong is still playing hide the ball with jurisdiction,
 3 which the Court has cautioned will result in “significant consequences.” *See* Starr Decl. Exh. 1,
 4 12/19/19 Hearing Tr. at 3:2-5; 5:2-3.

5 **A. The Liu Declarations Provided Inconsistent Testimony From the Same Witness**

6 Defendant’s motion was supported almost entirely by the denials of Luyao Liu, the CFO
 7 of Bitmain Hong Kong and Bitmain’s holding company. *See* D.E. 33-1, 10/1/19 Liu Decl., D.E.
 8 28-1, 11/7/19 Liu Reply Decl. *See also* D.E. 62-29, (Liu Declaration submitted on behalf of
 9 Bitmain’s holding company in another litigation). However, Mr. Liu has provided inconsistent
 10 testimony in several sworn declarations concerning the sales of Bitmain devices in the United
 11 States in this litigation and a separate litigation in Florida. *See* D.E. 33-1, 38-1. *See also*
 12 3/27/2020 Starr Decl., Liu Decl. submitted in *United American Corp. v. Bitmain, Inc., et. al.*,
 13 Case No. 1-18-cv-25106 (S.D. Fl.) (The “Liu FL Decl.”).

14 In his First Supplemental Brief, Plaintiff identified inconsistencies between Mr. Liu’s
 15 10/19/19 declaration and his 11/17/19 reply declaration in this case. Mr. Liu first stated that
 16 customers purchase ASIC devices from Defendant Bitmain Hong Kong’s website and he also
 17 attached Bitmain Hong Kong’s purported terms of service from the same website. *See* D.E. 63
 18 Supp. Brief at 8; D.E. 33-1, Liu Decl. at ¶ 1, 16, Liu Decl. Exh. 1 (“The services are provided by
 19 Bitmain Technologies Limited”). Mr. Liu later denied that Bitmain Hong Kong operates the
 20 website and instead attributed that conduct to Beijing Bitmain. *See* Liu Reply Decl. at ¶ 12.

21 Mr. Liu also admitted in this litigation that as of 10/19/19, customers purchased ASIC
 22 devices from Bitmain Hong Kong through Bitmain Hong Kong’s website. *See* 10/19/19 Liu
 23 Decl. at ¶ 1, 16 (“When a customer purchases ASIC devices from Bitmain [Hong Kong’s]
 24 website ...). However, in the Florida litigation, Mr. Liu, speaking on behalf of Bitmain Hong
 25 Kong, informed another federal judge that:

26 Bitmain Hong Kong has not sold ASIC mining devices to customers in the United
 27 States since July 31, 2018. Since August 1, 2018, an affiliated entity based in
 28 Singapore has handled all sales of ASIC mining devices in the United States.

1 See Starr Decl. Exh. 7, 3/25/20 Liu FL Decl. at ¶ 11. The PMK testified that he knew nothing
 2 about any revenue for the sale of devices in the United States ever going to Bitmain's Singapore
 3 entity. See PMK Tr. at 42:2-7. Moreover, the Riot Blockchain Filing confirms that Bitmain Hong
 4 Kong continues to receive revenue directly from the sale of Bitmain ASIC devices in the United
 5 States. See Exh. 4, Riot Blockchain Filing. The inconsistencies in Defendant Bitmain Hong
 6 Kong's conflicting statement are further reason for the Court to deny the motion.

7 III. CONCLUSION

8 For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant
 9 Bitmain Technologies Limited's Motion to Dismiss for Lack of personal jurisdiction so that this
 10 matter may be at issue; Bitmain's purposeful availment of California contacts created a
 11 substantial connection that justifies personal jurisdiction. *Burger King Corp.*, at 477-478.

12 Dated: October 4, 2021

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13 /s/ Manny Starr

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ECF CERTIFICATION

Pursuant to Civil Local Rule 5-1, I, Manny Starr, hereby attest that concurrence in the filing of this document has been obtained from all signatories.

DATED: October 4, 2021

FRONTIER LAW CENTER

By: /s/ Manny Starr
Manny Starr